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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 002294

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DEPARTMENT FOR EUR/SE

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SUBJECT: TURKISH STATE SECURITY COURT RE-CONVICTS LEYLA ZANA, CO-DEFENDANTS; VERDICT WILL BE APPEALED

REF: ANKARA 1559 AND PREVIOUS

(U) Classified by Polcouns John Kunstadter; reasons 1.4 (b,d).

1. (U) Summary: An Ankara State Security Court (SSC) April 21 re-convicted Leyla Zana and three other Kurdish former MPs charged with being members of the terrorist PKK, ending a contentious 13-month retrial that has been widely criticized by human rights advocates and EU parliamentarians as unfair. The ruling affirms the original 1994 verdict. The defense has already filed an appeal. In any event the defendants are expected to be released in 2005. Current AKP government plans to introduce legislation in May that would abolish the SSCs. End Summary.

2. (U) The SSC's verdict repeats the original conviction and 15-year sentence set in the defendants' controversial 1994 trial. The European Court of Human Rights (ECHR) ruled in 2001 that the 1994 trial was unfair; a retrial was granted in March 2003 following GOT enactment of a EU-related reform under which ECHR rulings are grounds for a possible retrial in a Turkish court. In accordance with the Anti-Terror Law, the convicts are expected to serve three-fourths of their sentence, meaning they will be released in 2005. Based on the date of their original incarceration, three would be released in March and one in October.

3. (U) Lead defense attorney Yusuf Alatas told us after the trial that he had already filed an appeal to a Turkish appellate court, and will apply separately to the ECHR. The ECHR has frequently overturned SSC convictions.

4. (U) The three judges on the SSC panel announced the verdict to a hushed courtroom after a 5-minute recess. Spectators -- including Kurdish rights activists, defendants' relatives, foreign diplomats, members of international NGOs, and European Parliament officials -- filed quietly out of the room. The defendants were not present; they began boycotting the sessions in March to protest a reported accusation by Justice Minister Cicek that they had "insulted" the court. On the courthouse steps, Alatas and European Parliament MP Luigi Vinci jointly addressed a large group of reporters. Vinci called the ruling an "insult" to the EU and ECHR and accused the court of bias against the defendants. Alatas said he had expected the decision, and argued that the court had revealed its "prejudiced" approach by repeating the decision reached in the original trial, despite the ECHR ruling.

5. (U) The defendants -- Leyla Zana, Hatip Dicle, Orhan Dogan, and Selim Sadak -- are former members of the pro-Kurdish-independence Democracy Party, which has since been banned. They were convicted of "staging separatist activities both in Turkey and abroad" as members of the PKK. At each of 13 consecutive trial sessions the court refused defense requests to have the defendants released pending the outcome of the trial. Alatas repeatedly argued the court was obligated to release his clients in light of the ECHR ruling in their favor. He also argued unsuccessfully that Chief Judge Mehmet Orhan Karadeniz should remove himself from the case because he voted against granting the re-trial (but was outvoted by the other two SSC judges).

Comment

6. (C) The SSC system has been an enduring obstacle to judicial reform in Turkey. SSCs have the authority to hold closed sessions and admit testimony taken under police interrogation in the absence of counsel. SSCs have often

convicted without persuasive evidence. Moreover, SSCs, ostensibly designed to try terrorists and other dangerous criminals, have been used routinely in the past by the State to intimidate and silence its critics. Many defendants tried in SSCs have been charged for non-violent expressions "insulting" the State and its institutions. The bulk of ECHR rulings against Turkey result from SSC convictions deemed in violation of the right to a fair trial.

17. (C) The current AKP government appears set finally to address the problem. A raft of constitutional amendments scheduled to be introduced in Parliament in May includes a measure that would eliminate the SSCs. Another measure would revise the physical structure in SSCs and heavy penal courts that places prosecutors and judges together on an elevated platform, while leaving defense attorneys seated below. Under the revisions, defense attorneys and prosecutors would both sit at ground-level, designating (at least formally) equal status in the courtroom.

18. (U) As at an earlier stage in the re-trial, chairman of the EU parliamentary ad hoc observer delegation Lagendijk issued a tough criticism of the court's conduct, including the court's refusal to allow defense witnesses to testify. To date Post has refrained from commenting publicly on the re-trial; given the defense lawyers' appeal, we plan to avoid public comment on the verdict.

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